

**ADDENDUM TO THE**  
**\_\_\_\_\_ AGREEMENT**  
**BETWEEN**  
**BALL STATE UNIVERSITY AND \_\_\_\_\_**

This Addendum is entered into pursuant to and forms a part of the \_\_\_\_\_ Agreement (“Agreement”) between **Ball State University** (“Ball State” or “University”) and \_\_\_\_\_ (“Contractor”).

Ball State and Contractor agree that this Addendum supplements and supersedes the terms of the Agreement with respect to the matters addressed herein. In the event of any conflict between the terms of this Addendum and the terms of the Agreement, the terms of this Addendum shall govern.

Ball State and Contractor hereby agree, by signing below, that the Agreement is modified as follows:

1. **Services.** Contractor shall provide the following: \_\_\_\_\_ (“Services”) as further described in the Agreement.
2. **Confidential Information.** Contractor acknowledges that the Agreement may allow the Contractor access to certain confidential information, which may include, but not be limited to: names, addresses, phone numbers, bank and credit card account numbers, Social Security numbers, and other non-public information, in both paper and electronic format (“Confidential Information”). Contractor shall develop, implement, maintain and use administrative, technical, and physical security measures conforming to the highest industry standards and controls to preserve the integrity and confidentiality of all Confidential Information received from, or on behalf of, Ball State or end users. Contractor shall report to Ball State any use or disclosure of Confidential Information not authorized by the Agreement, as amended by this Addendum. Contractor shall make the report to Ball State not later than one (1) business day after Contractor learns of or suspects such use or disclosure. Contractor’s initial report shall identify, to the extent then believed or known: (i) the nature of the unauthorized use or disclosure, (ii) the Confidential Information used or disclosed, (iii) who made the unauthorized use or received the unauthorized disclosure, (iv) what Contractor had done or shall do to mitigate any deleterious effect of unauthorized use or disclosure, and (v) what corrective action Contractor has taken or shall take to prevent future similar unauthorized use or disclosure. Subsequent to a breach, Contractor shall then make a final report to Ball State detailing the final resolution of these issues. Contractor shall at all times ensure that personnel having access to Confidential Information, including all Contractor employees, subcontractors, service providers, independent contractors, or agents employed or otherwise used by Contractor in connection with the Agreement, will be subject to and shall comply with all security and confidentiality provisions contained in the Agreement and this Addendum and all established security and privacy policies and practices of Contractor, which will be shared in their entirety with Ball State upon execution of the Agreement. In the event such policies are modified subsequent to the execution of the Agreement, then Contractor shall promptly notify Ball State in writing of such changes. In addition to the foregoing and pursuant to 10 IAC 5-3-1(4), the Contractor and Ball State agree to comply with the provisions of IC 4-1-10 and IC 4-1-11. If any Social Security number(s) is/are disclosed by Contractor, Contractor agrees to pay the cost of the notice of disclosure of a breach of the security of the system in addition to any other claims and expenses for which it is liable under the terms of the Agreement and this Addendum. Upon termination, cancellation, expiration, or other conclusion of the Agreement, Contractor shall return to Ball State, at no cost to Ball State, all Confidential Information in whatever form or medium it was received from or created on behalf of Ball State. Contractor shall complete such return as promptly as possible, but not more than thirty (30) days after the effective date of termination of the Agreement. In the event return of certain Confidential Information is prohibited by law or impossible, then Contractor shall destroy such Confidential Information within thirty (30) days of the effective date of termination of the Agreement, and Contractor shall certify in writing to Ball State that such destruction has been completed.
3. **Family Educational Rights and Privacy Act (“FERPA”) Compliance.** Contractor agrees to become familiar with and abide by the limitations on disclosure of personally identifiable information from education records as set forth in The Family Educational Rights and Privacy Act (20 U.S.C. § 1232g; 34 CFR Part 99). 34 CFR 99.33 (a)(2) states that the officers, employees and agents of a party that receives education record information from an educational institution may use such information only for the purposes for which the disclosure was made. The indemnification provided for under this Addendum applies fully to the failure of Contractor to at all times remain FERPA compliant. Contractor acknowledges that Ball State has a duty to maintain the privacy of student records, including without limitation education records as defined by FERPA, and further acknowledges that as a contractor to whom Ball State has outsourced certain institutional services or functions:
  - (a) Contractor will protect the privacy of all student education records to the fullest extent required of Ball State under FERPA;
  - (b) Contractor is performing an institutional service or function that has been outsourced by Ball State and for which Ball State would otherwise use its employees;
  - (c) Contractor is subject to all FERPA requirements governing the use and re-disclosure of personally identifiable information from education records, including without limitation the requirements of 34 CFR §99.33(a);
  - (d) Even in circumstances that might justify an exception under FERPA, Contractor may not disclose or re-disclose personally identifiable information unless Ball State has first authorized in writing such disclosure or re-disclosure; and
  - (e) Contractor will not use any personally identifiable information acquired from Ball State for any purpose other than performing the service or function that is the subject of the Agreement.
4. **Gramm-Leach-Bliley Act (“GLBA”) Compliance.** In the event Contractor’s services involve lending money or securities, access to bank or credit card information, credit or debit card processing, providing or underwriting insurance, investments, bonds, money orders or processing other financial instruments or records, then Contractor shall at all times comply with the Gramm-Leach-Bliley Act (“GLBA”). Notwithstanding anything to the contrary in the Agreement or this Addendum, in the event Contractor fails to fully comply with the GLBA for any reason, Ball State may terminate the Agreement immediately and seek any other available remedies. The indemnification provided for under this Addendum applies fully to the failure of Contractor to at all times remain GLBA compliant.
5. **Payment Card Industry (“PCI”) Compliance.** In the event Contractor’s services involve access to bank or credit card information, Contractor shall at all times comply with established credit card procedures in accordance with Payment Card Industry (“PCI”) requirements for data security. Contractor shall at all times maintain information technology standards and security that satisfy the requirements of the Payment Card Industry Data Security Standard (“PCI DSS”). Contractor shall be responsible for the security of all cardholder data that it receives and possesses under the Agreement, including the functions relating to transmitting, storing, and processing of cardholder data. Upon execution of the Agreement, Contractor shall provide to Ball State its PCI DSS compliance status, and evidence of its most recent validation of compliance. Contractor shall also provide other certifications of compliance, such as PA DSS, where applicable. Contractor shall immediately notify Ball State if it learns that it is no longer compliant with any PCI requirement and will immediately inform Ball State of the steps being taken to remediate the non-compliance status. In no event may Contractor’s notification to Ball State be later than five (5) calendar days after Contractor learns it is no longer compliant with any applicable PCI standard or requirement. Notwithstanding anything to the contrary in the Agreement or this Addendum, in the event Contractor loses PCI DSS certification of compliance from any company or becomes non-compliant for any reason, Ball State may terminate the Agreement immediately and seek any other available remedies. The indemnification provided for under this Addendum applies fully to the failure of Contractor to at all times remain PCI DSS compliant. In addition to the foregoing, Contractor shall also provide Ball State with a full copy of the Annual

Report on Compliance (“ROC”) as delivered by a Qualified Security Assessor (“QSA”) as well as a full copy of the quarterly network scan completed by a PCI Approved Scan Vendor (“ASV”).

6. **Service Level Agreement.** Procedures and details for credits applied to downtime of Services are set forth in Schedule A.

7. **Force Majeure.** Neither party shall be considered in breach of the Agreement, as amended hereby, for failure to perform if such failure is caused by national or local calamity, acts of terrorism, the act or regulation of any public authority, labor strike, war, epidemic, pandemic, quarantine, campus emergency, fire, storm, or other act of God, or any other cause beyond the reasonable control of the non-performing party that renders that party’s performance impossible (such circumstances being defined as a “Force Majeure” event). If a party asserts Force Majeure as an excuse for failure to perform the party’s obligation, then the non-performing party must prove that it took reasonable steps to minimize delay or damages caused by foreseeable events, that the party substantially fulfilled all non-excused obligations, and that the other party was expeditiously notified a Force Majeure was declared. With regard to hosted systems or Ball State data which is maintained or controlled by the Contractor, a Force Majeure event will not include any calamity such as a local power outage, local equipment failure, hurricane, earthquake, fire, severe weather, or other similar circumstance such as data loss which would be reasonably anticipated and mitigated by the protections of a fully compliant TIA-942 Tier III/IV datacenter. The parties further agree that in no event will Ball State be responsible for the payment of any services not delivered, including those not delivered due to a Force Majeure event, or for any other reason.

8. **Term and Termination.** The Agreement shall be effective on [REDACTED] (“Effective Date”) and shall continue for one (1) year from the Effective Date, unless sooner terminated as provided herein or extended by mutual written agreement of the parties. There shall be no automatic renewals of the Agreement. Notwithstanding anything to the contrary, Ball State may terminate the Agreement without cause upon thirty (30) days written notice. In the event of such termination for convenience, Ball State shall only be liable for payment of Services rendered up to the date of termination. In the event of a material breach, either party may immediately terminate the Agreement upon written notice, provided that the terminating party has given the other party at least ten (10) days written notice of and opportunity to cure the breach. Upon Ball State’s notice of termination, Contractor shall immediately cease performing under the Agreement and Ball State shall receive a pro rata refund of any prepaid fees. In addition to the foregoing, and without limiting its remedies otherwise available at law, Ball State may exercise the following remedial actions if Contractor fails to satisfy or perform the duties and obligations in the Agreement:

- (a) Suspend Contractor’s performance pending necessary corrective action as specified by Ball State without Contractor’s entitlement to adjustment in price/payment or schedule; and/or
- (b) Withhold payment to Contractor until the necessary services or corrections in performance are satisfactorily completed; and/or
- (c) Request the removal of employees or agents of Contractor whom Ball State justifies as being incompetent, careless, insubordinate, unsuitable, or otherwise unacceptable, or whose continued involvement under the Agreement Ball State deems to be not in the best interest of Ball State; and/or
- (d) Deny payment for those Services or obligations which have not been performed or provided, or which, due to circumstances caused by Contractor, cannot be performed or provided as required. Denial of the amount of payment must be reasonably related to the value of work or performance lost to Ball State.

The above remedies are cumulative and Ball State, in its sole discretion, may exercise any or all of them individually or simultaneously.

9. **Work Standards.** Contractor shall execute its responsibilities by following and applying at all times the highest professional and technical guidelines and standards. If Ball State becomes dissatisfied with the work product of or the working relationship with those individuals assigned to provide Services under the Agreement, then Ball State may request in writing the replacement of any or all such individuals, and Contractor shall grant such request. Contractor agrees to provide hosting services **ONLY** in United States based hosting facilities.

10. **Non-Performance.** In the event that Contractor fails to perform under any of the terms and provisions of the Agreement as amended hereby, the Contractor shall reimburse Ball State for any additional expenses incurred by Ball State to have the Services completed by a third party over and above what Ball State would have been required to pay Contractor had Contractor not failed to complete the Services as required.

11. **Representations.**

- (a) **Quality** – The Services provided by Contractor shall be of first quality and shall conform to advertised specifications. Where Contractor has reason to know or knows any particular purpose for which the Services are required, there is a warranty that the Services shall be fit for such purpose.
- (b) **Title** – The Services provided under the Agreement shall be delivered free of any rightful claim of any third person by way of infringement or the like.
- (c) **Security** – The Services provided under the Agreement shall be implemented and maintained using the industry-standard best practices, such as ISO 27001/27002, ITIL, and TIA-942 Tier III/IV. Contractor shall have been subject to recent audits of security or operational practices related to the delivery of Services, such as SOC 2 and SSAE 18 audits, and Contractor shall provide Ball State with full details concerning those portions of the resulting audit reports that pertain to the systems or general infrastructure used for Services under the Agreement. In the event Ball State finds Contractor’s information security policies and standards deficient, Ball State may require that the Contractor establish additional safeguards within a commercially reasonable time (but not more than forty-five (45) days). In the event Contractor chooses not to implement additional safeguards suggested by Ball State, then Ball State will have the right to immediately terminate the Agreement. Contractor warrants that the Services, content, products, and software it provides to Ball State and/or end users shall be free of any viruses, trojan horses, worms, or other harmful or malicious code, files, script, or programs. Contractor will inform Ball State of any infections immediately after becoming aware of such infection. Contractor shall be responsible for remedying any infection(s) and any liability resulting from such infection(s).

12. **Loss of Data.** In the event Contractor stores or processes data on behalf of Ball State, Contractor will be strictly liable for the protection of Ball State data and shall employ appropriate backup and retention safeguards to prevent data loss or inadvertent destruction. In the event of loss of any Ball State or end user data or records while such data or records are in Contractor’s possession, Contractor shall be responsible for recovering such lost data at Contractor’s sole cost and expense. A force majeure event will not relieve the Contractor from its responsibility to maintain and protect Ball State data. Contractor shall supply to Ball State at least semi-annually a certification of data safeguarding indicating validation of backups, a summary of the data retention schedule, and validation of off-site storage media rotation or data transmission. The failure of Ball State to insist upon delivery of such semi-annual certification shall in no event diminish the responsibilities of the Contractor under this section.

13. **Integration Support and Maintenance.** In the event any portion of the Services are hosted by the Contractor, the parties agree that from time-to-time certain operational updates may be required, such as, but not limited to, changes to Domain Name Systems (DNS), Single Sign-On Systems (SSO), file transfers, API integrations, or other infrastructure changes. These required updates may arise from Contractor or Ball State infrastructure changes or operational requirements. Unless additional hardware, software, or extensive services are needed (more than three [3] hours of documented work), the parties agree to arrange a mutually convenient time for such changes so as to minimize operational disruption. Provided such changes are pre-arranged, performed at agreed-upon mutually acceptable times, and otherwise conform to the requirements of this section, Ball State will not treat planned downtime associated with these changes as an “outage” under the SLA and the Contractor shall not levy any charges against Ball State for such changes.

14. **Liability.** Notwithstanding anything to the contrary in the Agreement or this Addendum, no limitation of liability whatsoever shall apply to liability arising from: (a) personal injury or death; (b) property damage; (c) the negligence or misconduct of Contractor; (d) breach of confidentiality; or (e) circumstances where the Agreement or this Addendum provides a right to indemnification.

**15. Indemnification.** Contractor shall defend, indemnify, and hold Ball State, its Trustees, officers, agents and employees harmless from and against any and all claims, demands, actions, causes of action, proceedings, judgments, damages, losses, expenses, damages, fines, charges, liens, and liabilities of any kind whatsoever arising directly or indirectly to persons or property, and any related costs and expenses, including court costs and reasonable attorney fees, in connection with the Services or activities of Contractor, its employees, or agents under the Agreement, whether the same arises before or after completion of the Services or expiration of the Agreement.

**16. Removal or Reassignment of Personnel Assigned by Contractor.** Ball State shall have the right to require the Contractor to replace the personnel whom Ball State reasonably and in good faith deems to be unfit or otherwise unsatisfactory to perform duties, responsibilities or obligations under the Agreement, provided that Ball State specifies its reasons, in writing, to the Contractor prior to any removal of personnel. Without limiting the foregoing, during the twenty-four (24) business hours immediately following notice to the Contractor of such request for replacement, designated representatives from each party shall meet as soon as practicable to discuss the request and any alternative solutions. Race, gender, age, religion, national origin, and other legally discriminatory characteristics and any other unlawful reason shall not be valid grounds for any such request by Ball State.

**17. Key Personnel.** “Key Personnel” shall mean those persons assigned to provide substantial services under the Agreement. Provided the individual remains in the employ of the Contractor and is otherwise reasonably able to do so (understanding that the individual may have been replaced due to health or other personal reasons and therefore may not be available) the Contractor shall not remove or temporarily reassign Key Personnel. Where Key Personnel must be reassigned for health or personal reasons, or where the individual is no longer employed by the Contractor, the Contractor will make every effort to provide at least thirty (30) days prior written notice to Ball State. Until such time as the parties have agreed to replacement personnel, the Contractor will apply a credit to Ball State, or otherwise extend the service period for the affected Key Personnel, for the same length of time in which the gap in Key Personnel occurred. The Contractor shall use commercially reasonable efforts to assign the personnel replacement as soon as reasonably practicable, and shall propose replacement personnel possessing comparable experience and training as the individual whom the Contractor proposes to replace. The Contractor shall not charge Ball State for costs associated with educating any individuals replacing Key Personnel (e.g., costs resulting from bringing a replacement “up to speed” with the project in order to resume the duties of the key personnel being replaced). The Contractor’s request for removal or reassignment of personnel shall not excuse the Contractor from meeting any deadlines.

**18. Background Checks for Contractor Personnel.** The Contractor shall ensure that the Contractor’s client-facing personnel (meaning those individuals who have direct, in-person contact with Ball State staff or students) and any other Contractor personnel who have access to Ball State’s Confidential Information: (a) are authorized to work in the jurisdiction in which they are assigned to perform Services; (b) are not proven substance abusers and have never been convicted of a felony involving theft, fraud, embezzlement, or other crimes of dishonesty or crimes involving violence against persons; and (c) are not otherwise disqualified from performing the Services under applicable laws. Contractor (itself, or through an authorized agent) shall conduct a background check on all such personnel to verify compliance with the preceding requirements and shall review the results of the background check to verify the personnel meet the Contractor’s standards for employment. Such background check shall be performed at Contractor’s expense. Except for a statement or other indication to Ball State that any personnel will or will not be permitted to perform Services under the Agreement, the Contractor will not be required to disclose the results of any background check to Ball State.

**19. Ownership.** All documents, records, data, articles, memoranda, materials, and all other content and work product provided by Ball State, developed under the Agreement specifically for Ball State, and/or received by Contractor under the Agreement (collectively, “Materials”) shall be the property of Ball State. Use of these materials, other than related to contract performance by the Contractor, without the prior written consent of Ball State, is prohibited. The Contractor shall provide Ball State full, immediate, and unrestricted access to Materials during the term of the Agreement and shall return all Materials to Ball State upon termination of the Agreement at no cost to Ball State.

**20. Insurance.** Contractor shall maintain, at a minimum, all of the following types of insurance, with such insurance being approved by Ball State:  
Workers’ Compensation - In an amount and to the extent required by Indiana law, for all employees connected with any work under the Agreement and, in case any work is sublet, Contractor shall require similar insurance for all of the subcontractor’s employees unless such employees are covered by the protection afforded by Contractor’s insurance. Such insurance shall comply fully with the Indiana Workers’ Compensation Law.  
Commercial General Liability Insurance – As broad as what is found on an ISO CG0001 or its equivalent on an “occurrence” basis in the following amounts and as follows: (i) One Million and 00/100 Dollars (\$1,000,000) each occurrence; (ii) Two Million and 00/100 Dollars (\$2,000,000) personal and advertising injury; (iii) Three Million and 00/100 Dollars (\$3,000,000) general annual aggregate; (iv) Two Million and 00/100 Dollars (\$2,000,000) products-completed operations aggregate; (v) Contractual liability coverage to the same or greater extent as what is covered under ISO CG0001 commercial general liability coverage form CG 00 01; and (vi) Ball State as additional insured.  
Computer and Technology Products and Services Professional Liability (Errors & Omissions) – Coverage with limits of no less than One Million and 00/100 Dollars (\$1,000,000) per occurrence with an annual aggregate amount of Three Million and 00/100 Dollars (\$3,000,000); and shall further include Cyber Liability coverage with limits of not less than One Million and 00/100 Dollars (\$1,000,000) per claim.  
Automobile Liability (included owned & non-owned) – \$1,000,000 per occurrence and \$1,000,000 annual aggregate.

All such insurance policies shall be with insurers qualified to do business in the state of Indiana. A certificate or certificates evidencing the existence thereof shall be delivered to Ball State on or before the effective date of the Agreement. Each such certificate shall contain a valid provision or endorsement that the policy may not be canceled, terminated, changed or modified without giving thirty (30) days written advance notice thereof to Ball State and provisions evidencing that the insurance reflected thereon meets the minimum requirements set forth herein. A renewal policy or certificate shall be delivered to Ball State at least thirty (30) days prior to the expiration date of each expiring policy. All required insurance policies shall name Ball State as an additional named insured. Ball State shall be exempt from, and in no way be liable for, any sums of money, which may represent a deductible or premium in any insurance policy. The payment of such deductible or premium shall be the sole responsibility of Contractor.

**21. Penalties/Interest/Attorney’s Fees.** Ball State will in good faith perform its required obligations and does not agree to pay any penalties, liquidated damages, interest or attorney’s fees, except as required by Indiana law.

**22. Taxes.** Ball State is tax-exempt and shall not be responsible for any taxes levied on the Contractor as a result of the Agreement.

**23. Time is of the Essence.** All time limits, time periods, and completion dates stated in the Agreement are of the essence of the Agreement.

**24. No Waiver.** The failure of Ball State to insist in any one or more instances upon the performance of any one or more provisions of the Agreement or this Addendum or to pursue any rights under the Agreement or this Addendum shall not be construed as a waiver of any such provisions or the relinquishment of any such rights.

**25. Assignment and Subcontracting.** Contractor may not assign or transfer any of its rights or obligations under the Agreement without first receiving prior written consent to do so from Ball State. Contractor shall not subcontract any of its obligations under the Agreement without the prior written consent of Ball State, which Ball State may withhold in its sole discretion. Contractor shall be responsible for all subcontractor work, without limitation, and any approved subcontractor and their respective employees will be held to the same or higher work standards as required by this Addendum.

- 26. Independent Contractor.** Contractor's engagement by Ball State is only for the purposes and to the extent set forth in the Agreement and shall be as an independent contractor and not as an employee of Ball State, and Ball State shall not be responsible for the payment of any payroll taxes under federal, state or local law.
- 27. Governing Law and Venue.** The Agreement, including this Addendum, shall be deemed to have been executed and delivered in the state of Indiana, and shall be interpreted and construed in accordance with and governed by the laws of such state, regardless of the form in which the Agreement, or any part thereof, may be submitted for construction, interpretation or enforcement. Any and all actions brought by either party in connection with or arising out of the Agreement shall be brought only in a court of appropriate jurisdiction in Delaware County, Indiana, or in the United States District Court for the Southern District of Indiana. Contractor hereby submits itself to the jurisdiction of such courts for purposes of any litigation between the parties in connection with or arising out of the Agreement.
- 28. Legal Rights.** Notwithstanding anything to the contrary in the Agreement or elsewhere, Ball State, a taxpayer-funded instrumentality of the State of Indiana, does not agree to the waiver of any legal rights it might possess in the event of a dispute. Any provision requiring Ball State to waive or relinquish its legal rights in connection with any dispute shall be of no force or effect.
- 29. Accessibility.** Contractor agrees to comply with all applicable requirements of Section 504 of the Rehabilitation Act of 1973, as amended, 29 USC 794, which prohibits discrimination on the basis of handicaps, and with the Americans with Disabilities Act of 1990 ("ADA"), as amended, 42 USC 12101 et seq., which requires the provision of accessible facilities and services. Goods and services provided by Contractor shall be accessible to individuals with disabilities to the greatest extent practical, but in no event less than the standards set forth by Indiana and federal accessibility laws. For web-based environments, services and content must conform to the Web Content Accessibility Guidelines ("WCAG") 2.1 AA.
- 30. Audits.** Notwithstanding anything to the contrary in the Agreement or elsewhere, any software audit shall be conducted by Ball State using an industry standard software asset management tool selected by Ball State in its reasonable discretion. In no event shall such audits be conducted more frequently than once every twenty-four (24) months. Moreover, in no event shall Contractor be permitted to conduct a software audit using its own software or any third-party software asset management tool. In the event an audit reveals installations or usage the parties agree exceeds Ball State's then-current licensed capacity, Ball State will terminate or curtail such use to align it with the then-licensed quantity, or, in the alternative, Ball State may "true up" its capacity at the per-seat or instance price of the last invoice paid by Ball State for such seats or licenses, pro-rated from the invoice date to the end of the current term.
- 31. Public Records.** The Agreement and this Addendum are public records in their entirety. Any document, record, or information transmitted to Ball State in any form during the term of the Agreement or in connection with the Agreement is a public record and may be disclosed in its entirety by Ball State, unless a specific exception to such disclosure applies under the Indiana Access to Public Records Act, codified at Indiana Code 5-14-3-1 et seq. In the event Contractor desires any material to be held as confidential and withheld from disclosure under the Indiana Access to Public Records Act, the Contractor must in each case clearly mark such information as "Confidential" and must indicate on each page of the document or material that confidential materials are included, **and in each case the Contractor must specify which statutory exception under the Indiana Access to Public Records Act applies.** Notwithstanding anything to the contrary, in the event that Ball State determines that a record must be disclosed under the Indiana Access to Public Records Act, or if Contractor failed to mark such document or record as required by this paragraph, Ball State may disclose such document or record as requested without any liability to Contractor.
- 32. Compliance with Ball State Policies.** In performing Services and while at any Ball State facilities, Contractor personnel shall: (a) conduct themselves in a professional manner; (b) comply with the policies, rules, processes, and procedures of Ball State; and (c) abide by all laws applicable to Ball State facilities and/or the provision of Services.
- 33. Covered Telecommunications Equipment or Services.** Contractor agrees and affirms that no part of the products and/or Services it provides to Ball State will incorporate products or services prohibited by Federal Acquisition Regulation part 52.204. Contractor further agrees and affirms that no "covered telecommunications equipment or services" as defined in FAR 52.204-25 shall be provided to Ball State at any point by Contractor, its agents, or subcontractors. Notwithstanding anything to the contrary elsewhere, Contractor agrees that it shall defend, indemnify, and hold Ball State harmless from and against any and all claims, causes of action, judgments, fines, liens, penalties, fees, expenses, damages, and liability arising out of or related to the provision and/or use of covered telecommunications equipment or services by Contractor, its agents, or subcontractors.
- 34. Prohibition on Doing Business with Certain Foreign Entities.** Contractor hereby certifies that neither it, nor any of its holding companies, affiliates, or subsidiaries are:
- (a) Listed in Section 889 of the 2019 National Defense Authorization Act ("NDAA");
  - (b) Listed in Section 1260H of the 2021 NDAA;
  - (c) Owned by the government of a country, or controlled by any governing or regulatory body located in a country, on the USDOC's foreign adversaries list under 15 C.F.R. 791.4; or
  - (d) Included on or controlled by an entity on the Specially Designated Nationals ("SDN") list maintained by the USDOT's Office of Foreign Asset Control ("OFAC"), currently available at <https://sanctionslist.ofac.treas.gov/Home/SdnList>
- 35. Name and Marks.** Contractor shall not use the name, marks, or trademarks of Ball State, or the name of any member of Ball State's staff, without the prior written consent and approval of Ball State in each instance. Title to and ownership of Ball State's marks shall remain with Ball State. Contractor shall use the marks exactly in the form provided and in conformance with any trademark usage policies. Contractor shall not take any action inconsistent with Ball State's ownership of the marks and any benefits accruing from use of such marks shall automatically vest in Ball State.
- 36. Severability.** If any provisions of the Agreement or this Addendum are contrary to, prohibited by, or deemed invalid by applicable laws or regulations of any jurisdiction in which it is sought to be enforced, then said provisions shall be deemed inapplicable and omitted and shall not invalidate the remaining provisions of the Agreement or this Addendum. In the event any provision of the Agreement or this Addendum shall be held invalid or unenforceable by a court of competent jurisdiction, such holding shall not invalidate or render unenforceable any other provision of the Agreement or this Addendum.
- 37. Survival.** The respective rights and obligations of the parties under this Addendum shall survive the termination of the Agreement.
- 38. Contractor Statements on Behalf of Ball State.** Pursuant to Ball State policy, a contractor of Ball State is prohibited from making a public statement in that contractor's official capacity on behalf of Ball State unless the statement: (1) relates to the business or operations of Ball State or to a Ball State-sponsored event; or (2) has been approved by the Board of Trustees of Ball State.
- 39. Reimbursable Expenses.** In the event any travel to Ball State is required, and reimbursement of such travel is pre-approved by Ball State in writing, then Ball State shall reimburse such reasonable travel expenses which conform to Ball State's travel policy and which are incurred in performance of this Agreement. The Contractor shall use reasonable efforts to limit travel and living expenses by only using coach air fare, booked in advance when available, staying at hotels identified in advance by Ball State as offering contractors a discounted rate, and sharing rental cars. Parking fines and any other tickets, fines, or penalties are not reimbursable.

40. **Fees and Procedures for Invoicing.** Fees for Services and expenses shall be detailed, categorized and clearly stated on an invoice (with the format of the invoice to be agreed by the parties) and the Contractor shall invoice Ball State no more frequently than on a monthly basis in arrears and such associated payment shall be due not earlier than thirty (30) days from the date of invoice. Ball State will in good faith perform its required payment obligations under the Agreement, and will not pay any late fees, penalties, liquidated damages, interest, or attorney's fees, except as required by Indiana law. Notwithstanding the payment of any amounts by Ball State, both Contractor and Ball State shall be entitled to pursue all their respective rights and remedies, both at law and in equity.
41. **Amendments; Authorized Signatories.** No modification, amendment, or waiver of any provision of the Agreement, or any terms or conditions incorporated therein by reference, shall be effective unless such modification, amendment, or waiver is in writing and signed by both parties. The parties acknowledge and agree that only those individuals expressly authorized in writing by Ball State have authority to execute the Agreement, this Addendum, or any renewal, amendment, or modification on behalf of Ball State, and that no other employee, agent, or representative of Ball State has authority to bind the University.
42. **Entire Agreement.** The Agreement as amended by this Addendum is the entire agreement between Ball State (including Ball State employees and other end users) and Contractor. In the event Contractor enters into terms of use, end user agreements, or any other agreements or understandings, whether electronic, click-through, verbal, or in writing, with Ball State employees or other end users, such agreements shall be null, void, and without effect, and the terms of this Addendum shall apply.
43. **Legal Authority.** Contractor warrants that it possesses the legal authority to enter into this Addendum and that it has taken all actions required by its procedures, bylaws, and/or applicable law to exercise that authority, and to lawfully authorize its undersigned signatory to execute this Addendum and to bind Contractor to its terms. The person executing this Addendum on behalf of Contractor warrants that he or she has full authorization to execute this Addendum.

Except as provided by the terms set forth herein, the Agreement shall remain unchanged and in full force and effect.

**CONTRACTOR**

By: \_\_\_\_\_  
Printed Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_

**BALL STATE UNIVERSITY**

By: \_\_\_\_\_  
Printed Name: Scott M. Stachler  
Title: Associate Vice President and Chief Budget Officer  
Date: \_\_\_\_\_

## Schedule A - Service Level Agreement

In the event Contractor's Services involve a hosted component where any part of the delivered solution will be operated or stored outside of the direct and exclusive control of Ball State, this Schedule will apply to the provision of these Hosted Services.

**Scheduled Uptime:** Hosted Services shall be available 24 hours a day, 7 days a week, 365 days a year, with the exception of Scheduled Downtime.

**Scheduled Downtime:** Contractor will use diligent efforts to announce scheduled maintenance, and in any event must arrange scheduled maintenance with Ball State at a minimum of seventy-two (72) hours in advance unless otherwise agreed prior to a particular individual maintenance incident. "Scheduled Downtime" is defined as downtime which meets these criteria.

**Unscheduled Downtime:** Any unavailability of Hosted Services which does not meet the criteria of Scheduled Downtime is "Unscheduled Downtime." Unscheduled Downtime will also include downtime due to emergency maintenance, Hosted Services which are significantly degraded or extremely sluggish, and Hosted Services which are only partially available. Unscheduled Downtime will not however include deficiency of Hosted Services resulting from any of the following:

- A. Extremely minor disruptions such as a missing individual graphic element which does not impact the functionality of Hosted Services or cause user confusion.
- B. Outages, delays, or latency elsewhere on the Internet that hinder access to the extent such problems are outside the control of Contractor or the control of Contractor's subcontractors or service providers.
- C. Scheduled maintenance during scheduled downtimes, to the extent provided herein.
- D. Domain Name Server (DNS) issues outside the control of Contractor or Contractor's subcontractors or service providers.
- E. False SLA breaches reported due to problems with the Contractor's measurement system but which result in no actual disruption of any Hosted Services provided under the Agreement.
- F. Ball State's acts or omissions including Ball State's custom scripting or coding, gross negligence, or willful misconduct.
- G. Browser or DNS caching which may make Hosted Services appear inaccessible, when in fact, Hosted Services are fully operational and accessible by Ball State.
- H. A prompt declaration of a Force Majeure event, which will relieve the Contractor of the credit schedule as defined in this Schedule. As Ball State cannot agree to pay for Services not delivered regardless of the excuse or circumstance however, Ball State shall receive a direct minute-by-minute reduction in monthly fees for non-delivery of Services, including non-delivery attributable to Force Majeure events.

**Actual Uptime:** Includes the time when the Hosted Services are fully functional and available. Actual Uptime is equal to the Scheduled Uptime minus the sum of Scheduled Downtime and Unscheduled Downtime.

**Outage Notification And Communications:** Prior to the start of any scheduled maintenance, Contractor must notify Ball State work is about to begin, and when complete also so notify Ball State. Contractor will be responsible for testing basic functionality to ensure Hosted Services are operating normally subsequent to any maintenance or change which the Contractor has implemented. All unscheduled outages require immediate alerts to Ball State with periodic (at least hourly) updates regarding status. Notices and alerts under this section will be sent via e-mail and follow a common format and originate from a common e-mail address. For any unscheduled outages the Contractor will also be responsible for promptly delivering a root cause analysis which provides complete, candid, and accurate technical and procedural details regarding the cause of the unscheduled outage. The degree of formality for the report shall be commensurate with the amount of downtime or disruption associated with the unscheduled downtime.

**Hosting Services Technical Account Manager:** Contractor will assign a named Technical Account Manager ("TAM") who shall have primary responsibility for interfacing with Ball State regarding the delivery of Hosted Services. The TAM will have direct access to senior level executives within the Contractor's organization and will be responsible for escalating unresolved incidents and seeing them through to resolution. The TAM will host regular periodic meetings with Ball State designees to discuss issues and status.

**Hosted Service Monitoring:** Contractor will utilize an alerting system which will at minimum perform periodic verification checks to ensure the Hosted Services are operating and fully available to Ball State. Contractor will work with Ball State to ensure Hosted Services monitoring is optimally configured and is providing full and accurate availability information. Contractor acknowledges the importance to Ball State in maintaining situational awareness of the Hosted Services, and will include Ball State in automated e-mail or other alert messages generated by the Contractor's monitoring systems. In the event the monitoring systems used by the Contractor cannot be configured to accommodate Ball State's needs, or should the Contractor determine such configuration is undesirable, Contractor will not impede Ball State from implementing a separate monitoring and alerting system and will work collaboratively with Ball State to facilitate operation, such as by arranging an account for Hosted Services checks without page access charges, provided Ball State's own monitoring is configured and performed in a commercially reasonable manner.

**Hosted Services Availability and Schedule of Credits and Remedies:** Hosted Services Availability is the ratio of Scheduled Uptime to Actual Uptime. If the Availability of any portion of the Hosted Services is less than 100%, Contractor will issue a credit to Ball State according to the following table:

Hosted Services Availability	Total Unscheduled Downtime in a Calendar Month	Credit Percentage
99.99%	Five (5) minutes or less.	0%
99.86%	Less than or equal to one (1) hour.	10%
99.73%	Less than or equal to two (2) hours.	20%
99.59%	Less than or equal to three (3) hours.	40%
99.45%	Less than or equal to four (4) hours.	60%

- A. For each additional one (1) hour the Hosted Services are not available, the credit shall be an additional 20%. After 100% credit for the given month is reached, credits shall continue to accumulate and shall be applied as described below. In the event Ball State experiences unscheduled downtime which exceeds four (4) hours in any given month, or in the event Ball State experiences more than four (4) separate incidents of unscheduled downtime exceeding one (1) hour in any six (6) month period, or any single incident in excess of four (4) hours, this will be considered a substantial breach for which Ball State may terminate the Agreement as provided in the Addendum.
- B. Credits will be applied to the billing cycle immediately following the billing period in which the outage occurred. If a credit is due in the final month Hosted Services are provided, then the credit will be applied against the fees due in the last month of the Agreement and excess refunded to Ball State. Contractor will be responsible for the timely application of credits to invoices for Hosted Services, and in no event will Ball State forfeit credits due to a failure to formally request them or to pay any invoice where credits have not been properly applied.